

# LEGALEase

## You and Your Lawyer



### If you have a problem with your lawyer

Good communication between you and your lawyer is the key to a good lawyer-client relationship. No matter what problem develops between you and your lawyer, speak with him or her as soon as the problem arises, first by telephone and then, if necessary, in person. Perhaps the problem has arisen due to a simple misunderstanding that can be cleared up in a short, frank telephone conversation. And if you are unable to reach your lawyer by telephone, then write and keep a copy of your letter. Tell the lawyer exactly what is bothering you and request that he or she schedule an appointment for you to discuss the matter.

If after you have spoken with your lawyer you have not resolved the problem, or if your lawyer has failed to respond to your calls and letters, then depending upon the circumstances, there are a number of things that you can do.

If you are simply dissatisfied with your lawyer's representation, or if you wish to change attorneys for some other reason, then you have the absolute right to do so. You always have a right to change lawyers for any reason, but you should be aware that a change could delay your case, and that you still have to pay the first lawyer for the work that has already been completed.

Lawyers are held to the highest level of professional and ethical conduct as prescribed by New York's Rules of Professional Conduct. If you have a question about the ethical conduct of an attorney, contact the New York State Bar Association, which can give you the telephone number for the appropriate Appellate Division grievance committee. You should keep in mind that a lawyer cannot guarantee the outcome of your case, and the fact that the results are less than what you may have hoped for or expected does not mean that there was unethical conduct.

*This pamphlet, which is based on New York law, is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. Produced by the New York State Bar Association in cooperation with the Committee on Attorney Professionalism.*



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### Early consultation with a lawyer could prevent serious problems later on.

#### Who needs a lawyer?

Sooner or later, almost everyone. Many people only think of seeing a lawyer after they develop a legal problem, but the best time to consult an attorney is before, not after, you have a legal problem.

#### When do you need a lawyer?

Early consultation with a lawyer can prevent serious problems later on. Common situations when you should have a lawyer include:

1. Before signing a contract to buy or sell a home, other real estate, or a business.
2. Making a will and trusts.
3. Before signing written contracts with major financial provisions or consequences.
4. When domestic/marital or other family problems arise.
5. When organizing a business. Legal services do not end with the formation of a business. There are ongoing concerns about intellectual property rights, employment law, workplace safety, etc.
6. When tax problems arise.
7. When planning your estate.
8. When accidents occur involving personal injury or property damage.
9. When you are sued or want to sue someone.
10. When dealing with an immigration issue.
11. As soon as you are asked questions by police or other law enforcement officials concerning your conduct, or if you are arrested or issued a citation for a serious traffic violation. If you are arrested or charged with a crime, or you are questioned about your possible involvement in a crime, you should see a lawyer at the earliest possible moment and make no statement of any kind until you have received legal advice. If you cannot afford a lawyer, you have the right to have a lawyer provided for you free of charge.

#### Attorney-client privilege

The attorney-client privilege is a legal concept that protects certain communications between a client and his or her lawyer and keeps those communications confidential. It is one of the oldest recognized privileges for confidential communications. The United States Supreme Court has stated that by assuring confidentiality, the privilege encourages clients to make "full and frank" disclosures to their lawyers, who are then better able to provide candid advice and effective representation. However, there are limitations to the privilege so please discuss this with your lawyer.

### The basis for a legal fee

Abraham Lincoln once emphasized the value of a lawyer's services when he said, "A lawyer's time and advice are his stock and trade."

Probably the key elements in any fee charged by a lawyer are the amount of time spent and the overall value of the service rendered on a particular problem. A lawyer's professional services differ from those of a doctor or dentist in one important way: much of the work is done when the client is not present.

Many clients are often unaware that a document drawn for them, or the advice given to them in a few minutes, is actually the product of a lawyer's education, experience, and many hours of work. The end result may also have involved time spent by other persons in the lawyer's office, such as legal assistants, the lawyer's associates, and/or legal secretaries.

Remember, when you engage the services of a lawyer, you are really hiring an entire law office to work for you.

#### Computation of the fee

In computing fees, a lawyer considers a number of elements:

**Time:** This is a basic element in determining a fee. While many lawyers work a minimum of eight to ten hours a day, about two-thirds of that time is billed to clients. The remaining time is devoted to keeping up with the many new and changing laws, continuing legal education courses, bar association committee studies, office management, and volunteer legal services.

**Operating expenses and overhead:** The cost of operating the average law office — including items such as rent, equipment, law library, supplies, professional and non-professional staff, and insurance — often amounts to more than 50% of the gross annual income derived from legal fees.

**Ability, experience, and reputation:** You should expect to pay a higher hourly rate or fixed fee for a lawyer who has a lot of experience and knowledge in a specific area of the law or who is particularly in demand.

This is not to imply that a lawyer less experienced in a certain area of the law is not able to cope with typical legal problems. The law is no different in this respect from any other profession, such as medicine, where there are specific fields of practice.

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## YOU AND YOUR LAWYER

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There are several other methods used for computing legal fees, a combination of which may be used:

1. A lawyer will frequently base a fee upon an hourly rate. This rate will depend on the circumstances of the case and the experience and expertise of the lawyer.
2. For some types of legal matters, a lawyer may charge a fixed fee. When you and your lawyer are discussing a fixed fee for such a matter, be sure to discuss what circumstances or situations may arise that may result in the charge of additional fees.
3. In some cases, the result itself may determine the fee. This is called a contingency arrangement, which is the norm in New York State in personal injury cases, and prohibited in criminal and most matrimonial cases. The lawyer receives no fee unless money is recovered for the client. If money is recovered, then the lawyer is paid an agreed upon percentage of the recovery, which in New York State might be about 33%, depending upon the type of case.

Remember, no matter what fee arrangement is used, the client may be expected to advance or to reimburse the lawyer for out-of-pocket disbursements, such as filing fees, medical reports, depositions, etc., and that unless a contingency fee arrangement has been made, the lawyer will expect to be paid whether the client wins or loses the case. You should keep in mind that in a court proceeding, no lawyer can guarantee the results.

**Discussing the fee:** You should discuss the cost of legal services at your first interview with a lawyer. The lawyer may not be able to determine the exact amount of time and effort required to handle your case but should be able to give you an estimate based upon past experience. A lawyer may quote a total charge for the work involved or may provide you with hourly rates and an estimate of the time required on a particular matter.

You should always discuss fees with a lawyer before you ask to have any work done. You should never hesitate to discuss fees at any time during the handling of your legal matter, including asking your lawyer for an itemized explanation of fees and expenses charged. If you receive a statement and believe that the fee isn't proper, talk it over with your lawyer promptly.

Misunderstandings about fees frequently result from the fact that the client is not aware of the extent of the lawyer's work on the case. This is by no means the client's fault. Clients who do not regularly use a lawyer may understandably believe that the only services being

performed by the lawyer are those the client can actually see, which is not generally the case. It is the obligation of the lawyer to explain, if asked, how the charges were made. And, of course, sometimes lawyers make mistakes when preparing the bills. Prompt, frank discussion between you and your lawyer is the best way to correct any mistakes and to clear up any misunderstanding that they may have caused.

### How to work best with your lawyer

1. Write down the names, addresses and telephone numbers of all persons involved, and all the facts you can recall that pertain to your case. By doing this yourself at home, you will cut down on the time your lawyer will have to spend gathering the information.
2. Take all papers relating to the case to the first interview.
3. Be as concise as possible in all interviews with your lawyer.
4. Be honest and tell your lawyer all the facts — good and bad. Your lawyer must keep them in the strictest of confidence and must know everything about your matter in order to be able to represent you to the best of his or her ability.
5. Have your lawyer analyze your matter and give you the pluses and minuses. Don't expect simple solutions to complex problems. Have your lawyer explain the various steps involved in handling your matter and ask for an estimate of how long it will take. Ask your lawyer to keep you informed about the progress of your matter.
6. Keep your lawyer fully informed of any new developments that might affect your matter. Avoid unnecessary telephone calls to your lawyer, but do call when you think it's necessary.
7. See a lawyer before signing documents or taking legal action. Be sure you understand all of the ramifications of what you are signing or doing, and then follow the advice of your lawyer.
8. Remember: No lawyer can guarantee the outcome of any case. Airtight cases rarely exist.

### Why you should not seek to handle your own legal affairs

A number of do-it-yourself "kits" are offered for sale from time to time. Kits are available for getting a divorce, avoiding probate, declaring bankruptcy, or forming a business. It's not illegal for you to use these for your own affairs; however, you risk paying the

consequences. Kits may appear to save you money, but a minor detail, one that you might overlook but one that a lawyer is trained to notice, could result in a loss far greater than what you "save" by trying to be your own lawyer. After a cost-benefit analysis, you might be best served to err on the side of hiring a professional.

### Statement of Client's Rights

As a public service, your lawyer may provide you with a Statement of Client's Rights as approved by the Administrative Board of the Courts. To help prevent any misunderstandings between you and your lawyer, please read the Statement carefully. It tells what you as a client are entitled to by law or by custom.

Reciprocal trust, courtesy and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the responsibilities as outlined by your attorney.

Your lawyer is available to answer any questions you may have about these rights, or about the way your case is being handled. Don't hesitate to call. He or she should be readily available to represent your best interests and to keep you informed about your case.

The client's rights are as follows:

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and nonlawyer personnel in your lawyer's office.
2. You are entitled to have your attorney handle your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to discharge your attorney and terminate the attorney-client relationship at any time. (Court approval may be required in some matters, and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge.)
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged reasonable fees and expenses and to have your lawyer explain before or within a reasonable time after commencement of the representation how the fees will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at

reasonable intervals. You may refuse to enter into any arrangement for fees and expenses that you find unsatisfactory. In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.

5. You are entitled to have your questions and concerns addressed promptly and to receive a prompt reply to your letters, telephone calls, emails, faxes, and other communications.
6. You are entitled to be kept reasonably informed as to the status of your matter and are entitled to have your attorney promptly comply with your reasonable requests for information, including your requests for copies of papers relevant to the matter. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter and make informed decisions regarding the representation.
7. You are entitled to have your legitimate objectives respected by your attorney. In particular, the decision of whether to settle your matter is yours and not your lawyer's. (Court approval of a settlement is required in some matters.)
8. You have the right to privacy in your communications with your lawyer and to have your confidential information preserved by your lawyer to the extent required by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the New York Rules of Professional Conduct.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.